

# THE MINUTES OF THE WARRANT COMMITTEE MEETING MAY 28, 2002

Chairman Brusch called the meeting to order at 6:15 PM.

Members absent : J. Heigham, D. Hobbs, and M. Widmer

Also present : Selectman Anne Marie Mahoney, Selectman Paul Solomon, Town Administrator Melvin Kleckner, Assistant to the Town Administrator Joyce Munro, Senior Planner Tim Higgins, Attorneys Mark Bobrowski (Special Counsel to the MOA and Land Agreement) and Mr. Bonds, Capital Budget Committee member Michael Speidel, and Town Treasurer Susan Kendall Freiner

Handouts: (1) Amendments to the Belmont Uplands District Zoning By-law, and (2) memo from Mel Kleckner regarding financial issues for Public Safety Telecommunications Facility

*Discussion of Warrant Articles for Special Town Meeting Article 4 Ratification of the (MOA) Memorandum of Agreement (with 13 members present)* The Committee discussed questions with Senior Planner Tim Higgins. Member Clark inquired the "60 days/3 years" wording on Page 2 of the Agreement. Mr. Higgins referred the question to the Attorneys that will be in attendance at Town Meeting tonight.

Chairman Brusch asked Mr. Higgins about Mr. Bonds' role in the Uplands Agreement. Mr. Higgins answered Mr. Bonds is retained to do a review from an economic perspective. He is a development expert retained by the Town.

Member Hilgenberg noted there is a lot of "ifs, ands and buts" that protect the Town if a scenario occurs. She asked Mr. Higgins what happens if O'Neill is no longer in business as a company. He responded the document actually "runs" with the land. It is attached to the deed and assigned to O'Neill's successors. He pointed out there is a clause if the Uplands were sold to a non-profit. Member Hofmann suggested this clause might not be enforceable according to Town Counsel Robert Morrissey. Member Clark noted the \$3 million payment if sold to a non-profit might not bind a buyer, but the rest of it, he feels comfortable with. He clarified the issue as, "If O'Neill goes bankrupt, and the trustee in bankruptcy buys the land, would the buyer in bankruptcy owe this \$3 million?" Member Clark noted the \$3 million clause needs to be classified as "liquidated damages" and not a "penalty."

Member Clark addressed the Attorneys. He observed O'Neill's address is sometimes King of Prussia, Pennsylvania and sometimes Newton, Massachusetts. He asked if there were, in fact, two companies involved. Selectman Brownsberger said O'Neill has proposed to use the Cambridge Parkway address. Mr. Bobrowski said the Pennsylvania address should be used.

Member Clark also readdressed his "60 days/3 years" question to the Attorneys. He asked when might that come into effect if we have gotten beyond the immediate period? Mr.

Bobrowski said these A and B provisions have been taken directly from the McLean Agreement and the answer to the B provision of "60 days" is in provision A. Selectman Brownsberger said there are three possibilities for the "60 days":

1. Never file a site plan at all, then the 24 months would kick in,
2. File a site plan but never file a building permit, in that case the Agreement executes 60 days after the site plan has been granted, and
3. File a site plan and within 60 days, they file a building permit, the Agreement is executed when the building permit is issued.

Member Clark remarked that in looking at the Conservation Easement (Page 4 7) of the Agreement, had he been representing O'Neill instead of the Town, he would question who is the "Grantee"? Is it the Board of Selectmen, Town Meeting, or the voters of Belmont? Who gives the assents and who gets the notice? From the Town's point of view, the only place this comes up is in 7. He suggested that the word "officials" be added.

Selectman Brownsberger noted the Conservation Restriction is "not quite perfect yet." It is entirely possible this Conservation Restriction will need work on it before it is completed.

Member Hilgenberg would like the point emphasized at Town Meeting that in the event the land is sold to a non-profit entity and that non-profit sells to someone else, all the agreements run with the land. Mr. Bobrowski pointed out 1 and 2 bind O'Neill and its successors. She then readdressed her earlier questions. Mr. Bobrowski responded similar to Mr. Higgins, noting the Agreement period is 99 years.

Member Hofmann asked the Attorneys his previous bankruptcy question. Mr. Bobrowski said it is only going to go back to the seller if and when a non-profit buyer acknowledging their responsibility gets the Agreement null and void. He does not expect that will occur. Member McCormick said if they are a non-profit, and they know they do not have to pay taxes, wouldn't that mean they will not owe the \$3 million? Mr. Bobrowski clarified this is not a tax, but a payment in lieu of taxes. It is his contention the only real argument is a policy argument. Member McCormick asked if there was any case law on this issue. Mr. Bobrowski congratulated the Town on "breaking new ground." He noted there is room for disagreement, and in his judgment this is "not fool proof but likely to succeed" in court.

Mr. Higgins reminded the Committee this land is currently zoned residential. Member Curtis said not to focus on the point of telling Town Meeting that "if you do not agree with this Agreement, then you will get" 40B housing or 80 town houses there instead. Member Hofmann noted some people need to understand the alternatives to not voting for this Agreement. Member Oates said this issue should be on its own merits, and not on what the alternatives are to this Agreement.

Member McCormick agreed with Member Curtis. Member Curtis asked if there were any way of ensuring the \$3 million would still be there?

Mr. Speidel asked since this MOA is superior to any mortgages or liens placed on the property, can it be extinguished by a foreclosure? Mr. Bobrowski answered no that it cannot be extinguished by a foreclosure.

Member Clark asked how much would the property be worth as zoned? Mr. Bonds said as zoned it would be worth \$6.8 - \$8 million. Member Clark then asked what kind of development can O'Neill look forward to if this Agreement takes place. Mr. Bonds stated if the area were dedicated as office space, it would increase the value by about \$1.8 million. If the space is used for research and development of a biotech type, then it would increase the value by between \$3 - \$4 million.

- Member Hofmann made a motion, Member Flewelling seconded said motion, and it was unanimously voted in favor of recommending approval of the MOA.

*Article 5 Ratification of the Uplands Agreement* Because there is no dollar figure allocated to this Article, the Warrant Committee does not need to take a vote. **Other** Mr. Kleckner stated the Town's Reserve Fund transfers are expected to be ready for the June 5th meeting. Also at that meeting, Chairman Brusch noted the Warrant Committee (in joint session with the Board of Selectmen) would be going through the top ten list of structural changes.

Chairman Brusch reminded the Committee that Monday, June 3rd was the override election.

Mr. Kleckner introduce Jeff Adamson, the summer intern from the Kennedy School of Government. He is here at the Town courtesy of a full grant.

#### ***Acceptance of Minutes***

1. Member Hofmann made a motion, Member Oates seconded said motion, and it was unanimously voted to accept the minutes as amended of May 8, 2002.
2. Member Oates made a motion, Member Hofmann seconded said motion, and it was unanimously voted to accept the minutes as amended of May 15, 2002.
3. Member Oates made a motion, Member Hofmann seconded said motion, and it was unanimously voted to accept the minutes as amended of May 20, 2002.
4. Member Hofmann made a motion, Member Oates seconded said motion, and it was unanimously voted to accept the minutes as amended of May 22, 2002.

Member Flewelling made a motion, and it was unanimously voted to adjourn the meeting at 7:14 PM. Respectfully submitted,

Kristina E. Frizzell

Interim Recording Clerk